

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 SEAN T. DOUTRE,

6 Plaintiff,

7
8 v.

9
10 ROMEO ARANAS, *et al.*,

11 Defendants.
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Case No. 2:12-cv-00772-RFB-VCF

13
14 **OPINION & ORDER**

15 Defendants' Motion for Summary Judgment
16 (Dkt. No. 21) and Plaintiff's Motion for a
17 Preliminary Injunction (Dkt. No. 27)
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21 **I. INTRODUCTION**

22 Before the Court is a Motion for Summary Judgment (Dkt. No. 21) filed by Defendants
23 Romeo Aranas, Benedicto Gutierrez, and Cheryl Dressler and a Motion for a Preliminary
24 Injunction (Dkt. No. 27) filed by Plaintiff Sean Doutre. For the reasons discussed below, the
25 Motion for Summary Judgment is denied with respect to Defendant Aranas and deferred with
26 respect to Defendants Gutierrez and Dressler. The Motion for a Preliminary Injunction is denied
27 without prejudice.
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II. BACKGROUND

Plaintiff Sean Doutre, proceeding pro se in this action, is currently incarcerated at Southern Desert Correctional Center (SDCC). Doutre brought an action under 42 U.S.C. § 1983 against Defendants Aranas, Gutierrez, and Dressler alleging the violation of his Eighth Amendment right to be free from cruel and unusual punishment. Doutre also named Brandon Oliver, James Cox, James Bannister, and an unnamed Doe defendant in his complaint. All defendants were named in their individual and official capacities. On October 30, 2012, the Court screened Doutre's complaint (Dkt. No. 3) and dismissed the Eighth Amendment claims

1 against Cox and Bannister as well as Dautre's claims for damages against all defendants in their
2 official capacities. The Court determined that Dautre's Eighth Amendment claims against
3 Aranas, Gutierrez, Dressler, Oliver, and the Doe defendant could proceed. Following a 90-day
4 stay during which no settlement was reached, the Attorney General accepted service on behalf of
5 Aranas, Gutierrez, and Dressler; no service was accepted on behalf of Oliver, who is no longer
6 an employee of the Nevada Department of Corrections (NDOC), or the Doe defendant. The
7 Court's analysis of the motions currently before it thus pertains to Defendants Aranas, Gutierrez,
8 and Dressler only.

9 Dautre suffers from ulcerative colitis, a chronic intestinal condition. In his complaint,
10 Dautre alleges that between September and December of 2011, Defendants were deliberately
11 indifferent to his serious medical needs. In September 2011, Dautre began to experience
12 symptoms of ulcerative colitis, including abdominal pain, cramps, and rectal bleeding. On
13 September 23, Dautre saw Aranas, a doctor employed by NDOC who works two days a week at
14 SDCC, for an appointment. During the appointment, Dautre reported that he had been bleeding
15 rectally and experiencing abdominal pains for approximately two weeks. During the
16 appointment, Dr. Aranas performed a rectal examination of Dautre. Dautre claims that this
17 examination was done without any warning and that he believes it was done out of anger and
18 frustration due to Dautre disagreeing with Dr. Aranas regarding the type of medication he should
19 be taking. Defendants maintain that Dautre "did not object" to the examination, Defs.' Mot.
20 Summ. J. at 2, that a rectal examination is standard practice given such symptoms, and that Dr.
21 Aranas, as a matter of professional practice, always informs his patients prior to administering
22 such examinations. Id. at Ex. B. Following the examination, Dr. Aranas diagnosed Dautre as
23 having an acute flare-up of ulcerative colitis, prescribed him several medications to treat his
24 symptoms, and scheduled a follow-up appointment.

25 On October 10, 2011, Dautre had a follow-up appointment with Dr. Aranas where Dautre
26 reported that his symptoms had improved. Dautre states that this visit took place in the open at
27 the nurse's station. During this appointment, Dautre requested a special diet to help manage his
28 symptoms. Defendants state that Dr. Aranas told Dautre that there was no special diet for colitis

1 and directed him to take milk of magnesia. Dautre alleges that Dr. Aranas made no such
2 statement, but rather that he said Dautre would not be put on any type of diet and that he “had
3 better not push it,” Opp. Summ. J. at 4, and that Dr. Aranas then walked away and ended the
4 visit.

5 Dautre was scheduled for two additional appointments, although the parties disagree as to
6 the exact date. Defendants allege that Dautre was scheduled to come to the clinic on November
7 7, 2011 and December 5, 2011, and that Dautre did not show up for his appointments on either
8 day. Dautre alleges that he believes his first appointment was scheduled for November 18 and
9 that when he showed up, he stood “face to face” with Dr. Aranas as Dr. Aranas told a corrections
10 officer that he would not see Dautre. On his next scheduled appointment on December 2, Dautre
11 states that he again showed up to the clinic and observed Dr. Aranas tell a nurse that he would
12 not see Dautre, at which point the nurse told Dautre to come back in three days’ time. In three
13 days, Dautre returned to the clinic and was told no doctor was available and to come back the
14 next day. Dautre alleges that it was not until December 6 that he was seen by a doctor, at which
15 point he was seen by Dr. Sanchez, another doctor at the clinic. At this appointment, Dautre
16 informed Dr. Sanchez that he was experiencing bloody stool seven to eight times per day. Dr.
17 Sanchez ordered a series of tests, including blood tests, a comprehensive metabolic panel, and a
18 stool sample, and ordered Dautre to adhere to a diet of no milk or milk products. The blood test
19 came back the following day, at which point Dr. Sanchez ordered further tests and directed
20 Dautre to begin taking iron pills.

21 On December 8, 2011, Dautre states that he fainted while waiting in the pill call line. He
22 was taken to see Dr. Sanchez, who diagnosed him with ulcerative colitis and anemia and ordered
23 him transported to Valley Hospital Medical Center. Dautre was hospitalized for one week,
24 during which time he was found to be severely anemic, received a blood transfusion and
25 intravenous fluids, and experienced an episode of bradycardia in which his heart rate dropped to
26 30-40 beats per minute. Dautre was discharged from Valley Hospital on December 15, 2011 and
27 returned to SDCC, where he reported to Dr. Sanchez that his symptoms had improved.

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1 Throughout this period, Doutre filed several grievances and kites requesting additional
2 medical attention for his symptoms and disagreeing with the way he had been treated. Doutre
3 filed an informal grievance on October 10, 2011, in which he stated that he was filing a
4 complaint against Dr. Aranas for being “negligent, hostile, and just plain pompous,” insisting on
5 giving a rectal exam instead of taking a stool sample, and ignoring Doutre’s subsequent
6 complaints of worsening symptoms and requests for treatment. Pl.’s Opp. Summ. J., Ex. C. That
7 grievance was denied by Defendant Gutierrez on October 27, 2011. Doutre filed a first-level
8 grievance on November 8, 2011 in which he noted his disagreement with Gutierrez’s decision. In
9 this grievance, Doutre reiterated his allegations that Dr. Aranas was hostile and indifferent
10 toward him and had ignored or delayed in responding to Doutre’s symptoms. Doutre’s first-level
11 grievance was denied by Defendant Dressler on December 27, 2011 and was received by Doutre
12 on January 18, 2012. Doutre filed a second-level grievance on January 17, 2012, alleging an
13 inadequate response to his informal grievance and a total lack of response to his first-level
14 grievance. He also complained of receiving absolutely no medical treatment between November
15 8, 2011 and December 6, 2011 despite filing an emergency grievance on November 22 and
16 medical kites on November 17, November 22, and December 2 alerting the medical department
17 at SDCC that his symptoms were worsening and stating that he was repeatedly sent away from
18 the clinic without being seen.

19 In this action, Doutre alleges that Aranas, Gutierrez and Dressler were deliberately
20 indifferent to his serious medical needs. Defendants filed a motion for summary judgment in
21 which they argue that Doutre failed to exhaust available administrative remedies with respect to
22 his claims against Gutierrez and Dressler, that Gutierrez and Dressler cannot be held liable
23 because they did not personally participate in Doutre’s medical treatment, and that Dr. Aranas
24 was not deliberately indifferent to Doutre’s medical need.

25 **III. LEGAL STANDARD**

26 Summary judgment is appropriate when the pleadings, depositions, answers to
27 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
28 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering the propriety of summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 960 (9th Cir. 2011). If the movant has carried its burden, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks omitted). Where a genuine dispute of material fact exists, however, the court will assume the version asserted by the non-moving party. See Bryan v. MacPherson, 630 F.3d 805, 823 (9th Cir. 2010); Coles v. Eagle, 704 F.3d 624, 629 (9th Cir. 2012) (“We must, in the context of summary judgment, resolve this disputed factual issue in favor of [the non-moving party and] draw all reasonable inferences in his favor . . .”).

If the nonmoving party can show that, for specified reasons, it is unable to present essential facts in opposition to a motion for summary judgment, Rule 56(d) permits the court to defer consideration of the motion, deny the motion, allow for additional discovery, or issue any other appropriate order. Where the parties have not yet had the benefit of discovery, “summary judgment is disfavored . . . particularly in cases involving confined pro se plaintiffs.” Jones v. Blanas, 393 F.3d 918, 930 (9th Cir. 2004) (citing Klinge v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988)).

IV. ANALYSIS

A. Exhaustion of Administrative Remedies

Defendants concede that Doutre has exhausted administrative remedies with respect to his claim against Aranas and thus can proceed with a § 1983 action against him. They argue, however, that Doutre has not exhausted administrative remedies with respect to his Eighth Amendment claim against Gutierrez and Dressler. Defendants contend that Doutre’s grievances were specifically directed toward Dr. Aranas, that Doutre did not name Gutierrez or Dressler in any of his grievances, and that Gutierrez and Dressler’s “only interaction with [Doutre] was in answering the grievance.” Mot. Summ. J. at 8.

1 The Prison Litigation Reform Act (PLRA) requires that before bringing a § 1983 action,
2 a prisoner must exhaust all available administrative remedies. 42 U.S.C. § 1997e(a). Exhaustion
3 must be proper, meaning that the prisoner must proceed through each step of the prison's
4 grievance procedure. Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009) (citing Woodford v.
5 Ngo, 548 U.S. 81, 93 (2006)). The level of detail needed in a grievance to properly exhaust under
6 the PLRA depends on the applicable grievance procedures of each individual prison. Jones v.
7 Bock, 549 U.S. 199, 218 (2007). In the absence of a prison policy or procedure specifying a
8 particular level of detail at which grievances must be stated, the Ninth Circuit has held that a
9 grievance is sufficient for exhaustion purposes "if it alerts the prison to the nature of the wrong
10 for which redress is sought." Griffin, 557 F.3d at 1120 (quoting Strong v. David, 297 F.3d 646,
11 650 (7th Cir. 2002)).

12 In this case, the Court finds that Doutre has exhausted administrative remedies with
13 respect to his claims against Gutierrez and Dressler. Doutre's grievances complaining of the
14 treatment given by Dr. Aranas sufficed to put the prison on notice of the nature of his problem,
15 and nothing in the PLRA or in NDOC's grievance procedures requires that a grievant
16 specifically name defendants. In Jones, the Supreme Court reversed the Sixth Circuit's decision
17 which held that in order to satisfy the exhaustion requirement, plaintiffs must name in their initial
18 grievances each defendant that was later sued. The Supreme Court noted that the grievance
19 procedures at issue "did not contain any provision specifying who must be named in a
20 grievance" and held that the PLRA likewise does not impose a "name all defendants"
21 requirement: "exhaustion is not *per se* inadequate simply because an individual later sued was
22 not named in the grievances." Jones, 549 U.S. at 217-19; see also id. at 219 (providing notice to
23 individuals who may later be sued "has not been thought to be one of the leading purposes of the
24 exhaustion requirement."). In this case, the Court has not found any provision in NDOC's
25 grievance procedures that would require Doutre to name in his grievances each defendant later
26 sued in a civil action. It is enough for purposes of exhaustion that Doutre's grievances put the
27 prison on notice of "the nature of the wrong for which redress is sought." Griffin, 557 F.3d at
28 1120 (quotation omitted).

1 In this case, that wrong was the prison's failure to adequately respond to his medical needs.
 2 Doutre has thus sufficiently exhausted his administrative remedies.

3 **B. Summary Judgment as to Defendants Gutierrez and Dressler**

4 Defendants submit to this Court that Gutierrez and Dressler are entitled to summary
 5 judgment because liability cannot attach in a § 1983 claim absent a showing of personal
 6 participation or direction in the alleged constitutional violation. Defendants argue that Gutierrez
 7 and Dressler's only involvement in relation to Doutre's medical care was to review and deny the
 8 grievances that he filed, and that this involvement is not enough to establish personal
 9 participation under § 1983. In response, Doutre claims that there are multiple disputed issues of
 10 material fact with respect to the degree of involvement of Gutierrez and Dressler in Doutre's
 11 medical treatment as well as their knowledge of the severity of his symptoms during the time that
 12 he was denied medical care. In addition, Doutre states that he has not had the benefit of
 13 discovery, and has submitted a declaration in which he requests additional time to engage in
 14 discovery and states that discovery will enable him to provide proof of his claims. See Pl.'s Opp.
 15 Summ. J., Ex. B.¹

16 Gutierrez and Dressler are not entitled to summary judgment at this time. Doutre has not
 17 yet had the opportunity to request or obtain evidence of his claims against Gutierrez and
 18 Dressler, and in addition has submitted a declaration pursuant to Rule 56(d) which refers to his
 19 need to develop the factual record to "prove germane facts of his claim." Id. Further, Doutre is
 20 proceeding without counsel, and the Ninth Circuit has instructed district courts to "construe
 21 liberally motion papers and pleadings filed by *pro se* inmates and . . . avoid applying summary
 22 judgment rules strictly." Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010). When requests
 23 for additional discovery have been made, summary judgment "is appropriate only where such
 24 discovery would be fruitless with respect to the proof of a viable claim." Blanas, 393 F.3d at 930
 25 (internal quotation and citation omitted). The Ninth Circuit has emphasized that, in cases where
 26 there has been no discovery, "summary judgment is disfavored . . . particularly in cases

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 28 ¹ Although Doutre's declaration as written is pursuant to Rule 56(f), the Court notes that that provision was relabeled as Rule 56(d) in the 2010 Amendment to the Federal Rules of Civil Procedures. The Court thus construes Doutre's declaration as being pursuant to Rule 56(d).

1 involving confined pro se plaintiffs.” Jones v. Blanas, 393 F.3d 918, 930 (9th Cir. 2004) (citing
 2 Klinge v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988)). In this case, there has been no
 3 discovery at all, and in his briefing to the Court, Dautre identified specific and material factual
 4 issues relevant to his claim against Gutierrez and Dressler that he has not yet been able to
 5 investigate or prove. Therefore, pursuant to Rule 56(d), the Court grants Dautre’s request for
 6 discovery and defers a ruling on summary judgment until he has had an opportunity to obtain
 7 discovery from Defendants. See, e.g., Calloway v. Veal, 571 F. App’x 626 (9th Cir. 2014)
 8 (vacating a district court’s grant of summary judgment for defendants when the plaintiff,
 9 appearing *in forma pauperis* and in pro per while incarcerated, had not had an adequate
 10 opportunity to conduct discovery, and construing the plaintiff’s opposition to summary judgment
 11 as a request for additional discovery under Rule 56(d)).

12 **C. Summary Judgment as to Defendant Aranas**

13 Defendants argue that Dr. Aranas did not violate Dautre’s Eighth Amendment rights.
 14 They claim that there is no evidence to suggest that Aranas knowingly disregarded a substantial
 15 risk to Dautre’s health. Instead, Defendants contend that Aranas treated Dautre “responsively
 16 and responsibly given the information he had at the time,” Defs.’ Mot. Summ. J. at 2, by
 17 examining him, reviewing his medical records, diagnosing him, and prescribing him medication.
 18 According to Defendants’ brief, Aranas “had no information that would suggest [Dautre] was
 19 losing so much blood that hospitalization was required,” particularly since Dautre missed two of
 20 his scheduled appointments. In sum, Defendants conclude that Dautre’s claim amounts to
 21 nothing more than a “difference of opinion” regarding treatment or a dislike of Aranas’s bedside
 22 manner, neither of which amounts to a constitutional violation. In response, Dautre argues that
 23 the conflicting factual allegations in the parties’ briefs and declarations show that genuine issues
 24 of material fact exist as to his Eighth Amendment claim against Aranas. Specifically, Dautre
 25 alleges that Aranas showed “a complete lack of concern and treatment for [Dautre’s] worsening
 26 complaints of pain” and “deliberately chose to ignore [Dautre’s] worsening condition by refusing
 27 to see him when he showed up for appointments” Pl.’s Opp. Summ. J. at 14.

28 . . .

1 To establish an Eighth Amendment claim against prison officials for medical treatment,
2 an incarcerated plaintiff must show deliberate indifference to his serious medical needs. Peralta
3 v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (citing Estelle v. Gamble, 429 U.S. 97, 104
4 (1976)). The Ninth Circuit has established a two-part test for deliberate indifference: first, the
5 plaintiff must establish a serious medical need, meaning that failure to treat the condition could
6 result in “significant injury or the unnecessary and wanton infliction of pain.” Id. (quoting Jett v.
7 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotation omitted)). Second, the plaintiff
8 must demonstrate the defendant’s deliberate indifference to the need, meaning that the prison
9 official “knows of and disregards an excessive risk to inmate health.” Id. (quoting Farmer v.
10 Brennan, 511 U.S. 825, 837 (1994)). The defendant’s indifference to or interference with the
11 plaintiff’s medical care must be intentional; negligence will not suffice to state a deliberate
12 indifference claim. Jett, 439 F.3d at 1096. Further, the plaintiff must show that harm resulted
13 from the defendant’s indifference, although the harm need not necessarily be substantial. Id.

14 Here, Aranas is not entitled to summary judgment. The Court finds it to be undisputed
15 that Dautre meets the first part of the deliberate indifference test. Dautre’s diagnosis of
16 ulcerative colitis is a serious medical need that satisfies the first prong of the deliberate
17 indifference test. It is also clear from his grievances that Dautre alerted the prison to the fact that
18 his condition had resulted in his previous hospitalization and that he believed there were and are
19 known preventive treatments that can help manage the symptoms of ulcerative colitis.
20 Defendants do not deny that ulcerative colitis is a serious medical need that, left untreated, can
21 cause significant injury and pain. Neither do Defendants deny—in their briefs, declarations nor
22 otherwise—that Dautre suffered from ulcerative colitis, that this condition can flare up and cause
23 significant injury, that it requires regular and ongoing monitoring and treatment, or that there are
24 diets and other preventive treatments that can help manage the symptoms of ulcerative colitis.
25 Therefore, it appears undisputed that Dautre has established a serious medical need.

26 With respect to the second part of the deliberate indifference test, the Court identifies
27 several genuine issues of material fact as to whether Aranas was deliberately indifferent to
28 Dautre’s serious medical need. As it must on a motion for summary judgment, the Court views

1 the facts and draws all inferences in the light most favorable to Doutre, and the Court also
2 liberally construes motion papers and avoids strict application of summary judgment rules for
3 pro se inmate plaintiffs. Thomas, 611 F.3d at 1150.

4 First, there is a genuine issue of material fact as to which party was at fault for Doutre not
5 being seen for follow-up appointments at the clinic after Aranas had diagnosed him with a
6 serious condition that requires monitoring and ongoing treatment. In his sworn statement, Doutre
7 claims that he showed up to the clinic for scheduled appointments on November 18, 2011 and
8 December 2, 2011 and that Aranas refused to see him despite knowing that Doutre was present.
9 See Decl. of Sean Doutre in Pl.'s Opp. Summ. J. at 4-5. Defendants claim that Doutre's
10 appointments were actually scheduled for November 7, 2011 and December 5, 2011 and that
11 Doutre did not show up for these appointments. See Defs.' Mot. Summ. J. at 3. Doutre has
12 provided sufficient evidence to enable a reasonable juror to find that Aranas turned Doutre away
13 when he showed up for his appointments despite having diagnosed him with a serious medical
14 condition.

15 Second, a genuine issue of material fact exists as to whether Aranas deliberately ignored
16 Doutre's complaints of worsening symptoms of colitis and continued to refuse to see him in the
17 clinic despite knowledge of these symptoms. Doutre states that he submitted an emergency
18 grievance on November 22, 2011 stating that his symptoms of colitis were continuing to get
19 worse and were very severe at that point. Doutre states that he complained that his "bleeding was
20 getting a lot worse" and that "it hurt to eat and . . . to go to the bathroom." Decl. of Sean Doutre
21 in Pl.'s Opp. Summ. J. at 5. Doutre also alleges that at the time he filed this emergency
22 grievance, "[his] physical symptoms were so bad that the officers who worked in the unit
23 recognized [he] wasn't doing well." Id. Doutre states that he was told that the medical
24 department informed the grievance respondents that his situation was not life-threatening and
25 that he would not be seen. Nowhere in their submissions to this Court do Defendants deny that
26 Doutre submitted an emergency grievance complaining of worsening symptoms of colitis.
27 Defendants also do not deny that Aranas was aware of Doutre's grievance or the complaints
28 contained within it, that Aranas received a copy of the grievance, or that Aranas was involved in

1 responding to the grievance. Doutre has established sufficient facts to allow a reasonable juror to
2 find that Aranas ignored or dismissed Doutre's emergency grievance complaining that his
3 bleeding and other symptoms of colitis were becoming more severe and that this failure to
4 respond caused harm to Doutre, thus constituting deliberate indifference.

5 Third, a genuine issue of material fact exists as to whether Aranas was aware of and
6 failed to respond to a medical kite submitted by Doutre on November 17, 2011, stating that his
7 ulcerative colitis had flared up again and that Doutre was bleeding. See Medical Records of Sean
8 Doutre Submitted Under Seal (Dkt. No. 52) ("Doutre Sealed Medical Records").² Defendants do
9 not deny that Doutre submitted this and other kites. In his brief, Doutre argues that his
10 submission of medical kites, combined with his grievances and appearances at the clinic, put
11 Defendants on notice of his condition and prove that they were aware of his worsening
12 symptoms. See Pl.'s Opp. Summ. J. at 16. Viewing the facts and drawing all inferences in the
13 light most favorable to Doutre, a reasonable juror could find that Aranas, already being aware of
14 Doutre's serious medical need, ignored or otherwise failed to respond to Doutre's request for
15 medical attention and report of worsening symptoms and that this failure amounted to deliberate
16 indifference.

17 Fourth, a genuine issue of material fact exists as to whether Aranas ignored Doutre's
18 request for treatment made via a medical kite submitted on November 22, 2011, stating that
19 Doutre had a severe case of ulcerative colitis and was sent away from his appointment on
20 November 18 without being seen. See Doutre Sealed Medical Records (Dkt. No. 52). Defendants
21 do not deny that Doutre submitted this kite.

22 For reasons discussed above, a reasonable juror could find that Aranas, already being
23 aware of Doutre's serious medical need, was deliberately indifferent to that need by ignoring or
24 failing to respond to this request for medical attention.

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26
27 ² The medical kites submitted by Doutre on November 17, November 22, and December 2 of
28 2011 were provided to the Court by the Nevada Department of Corrections pursuant to an Order
Compelling the Production of Documents (Dkt. No. 48). The Court hereby takes judicial notice
of all medical records submitted under seal pursuant to said Order (Dkt. Nos. 49, 50, 51, 52, and
53).

1 Fifth, a genuine issue of material fact exists as to whether Aranas ignored Dautre's
2 request for treatment made via a medical kite submitted on December 2, 2011, stating that Dr.
3 Aranas still refused to see him despite the fact that he had complained of diarrhea and bleeding
4 two weeks earlier and his condition had not improved. See id. Defendants do not deny that
5 Dautre submitted this kite. For reasons discussed above, a reasonable juror could find that
6 Aranas, already being aware of Dautre's serious medical need, was deliberately indifferent to
7 that need by ignoring or failing to respond to this request for medical attention.

8 Sixth, there is a genuine issue of material fact as to whether Aranas, having diagnosed
9 Dautre with a serious medical condition, should have implemented and followed a regimen of
10 monitoring, follow-up testing, and preventive treatment for Dautre prior to his hospitalization.
11 In his initial grievance to the prison filed on October 10, 2011, Dautre states that "without early
12 and proper medical attention" a flare-up of ulcerative colitis "can be life threatening and if
13 ignored can lead to more serious health conditions such as colon cancer." Pl.'s Opp. Summ. J.,
14 Ex. C. Dautre also states in his grievances that "there are known treatments that work in
15 preventing flare ups and help make any symptoms of ulcerative colitis disappear, and help in
16 preventing further damage," id., and that "until steps are taken to provide [him] with proper long
17 term treatment and preventitive [sic] treatment [he is] going to continue to have health problems
18 and frequent flare-ups of ulcerative colitis." Id. at Ex. D. These statements clearly indicate
19 Dautre's strong belief that, while severe, his condition can be managed and his symptoms can be
20 prevented from worsening through proper long-term care, monitoring and preventive
21 treatment—a belief that is not disputed or denied by Defendants. In fact, Dautre requested a
22 special diet to manage his symptoms, including probiotics and Omega 3 supplements. See Decl.
23 of Dr. Romeo Aranas in Defs.' Mot. Summ. J., Ex. B. However, Dautre states that in response to
24 this request, Aranas told him that he would not be put on any type of diet and that he "had better
25 not push it." Decl. of Sean Dautre in Pl.'s Opp. Summ. J. at 4. Defendants' submissions do not
26 address the issue of preventive treatment or follow-up care, but Defendants do argue that Aranas
27 properly treated Dautre at his appointments on September 23 and October 10. They further argue
28 that, since Dautre reported on October 10 that his symptoms were improving and then missed his

1 next two scheduled appointments, Aranas had no information suggesting that Doutre's symptoms
2 were worsening or that he would need to be hospitalized. See Defs.' Mot. Summ. J. at 9-11.
3 However, this argument is contradicted by Doutre's sworn statement that he showed up for his
4 two scheduled appointments in November and December and that Aranas refused to see him
5 each time. In his sworn statement, Dr. Aranas also states that he told Doutre that there is no
6 special diet for ulcerative colitis and that he ordered milk of magnesia for Doutre's symptoms.
7 Decl. of Dr. Romeo Aranas in Defs.' Mot. Summ. J., Ex. B. However, Defendants (specifically
8 Dr. Aranas) do not deny that there may be diets or other treatments that can help prevent
9 symptoms of colitis from becoming more severe. In addition, Aranas's statement that there is no
10 special diet for colitis is at least called into question by the fact that when Doutre saw Dr.
11 Sanchez for his symptoms on December 6, Dr. Sanchez placed him on a dietary restriction of no
12 milk or milk products. See Defs.' Mot. Summ. J. at 4. Thus, Doutre has provided sufficient
13 evidence to enable a reasonable juror to find that Aranas was aware that Doutre suffered from a
14 serious condition that required consistent follow-up and a preventive treatment regimen. A
15 reasonable juror could also find that Aranas did not follow any such treatment plan or regimen,
16 including follow-up appointments and a diet designed to manage Doutre's symptoms, and that
17 this failure to act exacerbated Doutre's condition and constituted deliberate indifference.

18 The Court therefore finds that Doutre has established genuine issues of material fact as to
19 whether Aranas refused to see Doutre at his follow-up appointments in November and December
20 despite knowing that he suffered from a serious condition requiring consistent treatment, whether
21 Aranas explicitly ignored Doutre's complaints that his symptoms were worsening and refused to
22 see him despite his filing of an emergency grievance and three medical kites requesting
23 treatment, and whether Aranas should have followed a preventive treatment and monitoring
24 regimen to prevent Doutre's condition from becoming worse. The establishment of any one of
25 these facts at trial, or a combination of them, could enable a jury to find for Doutre on his
26 deliberate indifference claim. The Court therefore denies Aranas's motion for summary
27 judgment.

28

D. Plaintiff's Motion for Preliminary Injunction

Doutre has also requested that this Court issue a preliminary injunction against Defendants requiring them to ensure that Doutre is examined and given a plan of treatment by a specialist and to provide any other medication and treatment necessary to address Doutre's symptoms. Doutre filed this request on May 15, 2013, alleging that he began experiencing severe symptoms of colitis on April 23, 2013, that he had been without his prescribed medications for more than two weeks, and that the medical department at SDCC had refused to respond to his requests for treatment or put him on the list to be seen by medical staff. Doutre's motion for a preliminary injunction was also labeled as a request for a temporary restraining order. On May 21, 2013, this Court denied Doutre's motion for a temporary restraining order because he failed to adequately demonstrate that he would suffer immediate and irreparable harm prior to Defendants filing their response. See Order (Dkt. #28).

"A plaintiff seeking a preliminary injunction must establish: (1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tip in its favor, and (4) that the public interest favors an injunction." Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). The Ninth Circuit continues to apply the "serious questions" test for preliminary injunctions. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011). According to this test, a plaintiff can obtain a preliminary injunction by demonstrating "that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." Id. at 1134-35 (citation omitted). The Supreme Court has stated that an injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter, 555 U.S. at 22.

Based upon representations made by Doutre at the hearing on this motion as well as the Court's review of medical records submitted by NDOC, Doutre is not entitled to a preliminary injunction at this time because he has not demonstrated that "irreparable harm is likely to result in the absence of the injunction." Alliance for the Wild Rockies, 632 F.3d at 1135. Following the

1 filing of his motion for a preliminary injunction, Doutre was transferred to Northern Nevada
2 Correctional Center (NNCC), where a colonoscopy was performed. See Doutre Sealed Medical
3 Records (Dkt. No. 50). Since then, it appears that Doutre's symptoms have remained stable and
4 he has made no major complaints to either NNCC or SDCC regarding his symptoms of
5 ulcerative colitis. At the hearing on this matter, Doutre stated that he was satisfied with the
6 current treatment he was receiving. The Court therefore finds that at the present time an
7 injunction is not necessary to prevent likely irreparable harm. However, should there be a change
8 in the medical treatment Doutre is receiving from SDCC, Doutre will not be prohibited from
9 filing another motion for a preliminary injunction or temporary restraining order to prevent
10 further damage to his health.

11 CONCLUSION

12 IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is
13 DEFERRED with respect to Defendants Gutierrez and Dressler. Upon the close of discovery,
14 Defendants Gutierrez and Dressler may move the Court to consider their previously submitted
15 motion or submit a new or amended motion for summary judgment.

16 IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment is
17 DENIED with respect to Defendant Aranas.

18 IT IS FURTHER ORDERED that Plaintiff's Motion for a Preliminary Injunction is
19 DENIED without prejudice.

20 DATED this 8th day of October, 2014.



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22 **RICHARD F. BOULWARE, II**
23 **UNITED STATES DISTRICT JUDGE**
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